IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 67 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX

Versus

FATEHSINHJI GINNING PRESSING & MANUFACTURING CO

Appearance:
MR BB NAIK with MR MANISH R BHATT for Petitioner
MR KC PATEL for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE M.S.SHAH

Date of decision: 08/01/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

At the instance of the Commissioner of Income-tax, Rajkot, the Income Tax Appellate Tribunal,

Ahmedabad bench "A" has referred the following question of law to the High Court for its opinion under Section 256(1) of the Income-tax Act, 1961 :-

"Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that investment allowance and depreciation should be allowed without reducing the cost of capital asset by the amount of subsidy received ?"

F A C T S :

2. The respondent is a Company having its factory in Limbdi which is declared to be a backward area. The respondent assessee had obtained subsidy of Rs.94,557/from the State Government for establishing an industry at Limbdi. The assessee had claimed depreciation on the plant and machinery installed in its factory as per the depreciation rate schedule contained in the Income-tax Rule, 1962. While framing the assessments, the Income-tax Officer was of the view that the subsidy received by the assessee from the Government was revenue receipt. He, therefore, included the amount of subsidy received by the assessee in computing its total income. In appeal before the Commissioner (Appeals), it was held that the subsidy received by the assessee from the Government was not revenue receipt in the hands of the assessee. Being aggrieved by the order of the Commissioner (Appeals), the revenue approached the Income-tax Tribunal, Ahmedabad Bench "A" by filing ITA No. 1066/Ahd/1983 for Assessment Year 1976-77 and ITA No. 1067/Ahd/1983 for Assessment Year 1978-79. The Tribunal, after going through the record of the case, found that the State Government had granted subsidy to the assessee by way of impetus to establish an industry in the backward area without any further conditions or stipulations to invest a part of such subsidy in the purchase of capital assets and, therefore, the subsidy was not revenue receipt in the hands of the assessee. In view of the said conclusion, the Tribunal dismissed both the appeals by judgment dated 21.5.1984. Thereupon, the revenue had approached the High Court and in view of the direction given by the High Court, the Tribunal has referred the question of law quoted earlier.

Opinion

3. We have heard the learned counsel for the parties. The fact that the State Government had granted subsidy to the assessee by way of impetus to establish an

industry in the backward area without any further conditions or stipulations to invest a part of such subsidy in the purchase of capital assets is not in dispute. In CIT vs. PJ Chemicals Ltd., 210 ITR 830, the Supreme Court has ruled that where the Government subsidy is intended as an incentive to encourage entrepreneurs to move to backward areas and establish industries, the specified percentage of the fixed capital cost, which the basis for determining the subsidy, being only a measure adopted under the scheme to quantify the financial aid, is not a payment, directly or indirectly, to meet any portion of the `actual cost'. After interpreting the expression `actual cost' appearing in Section 43(1) of the Income-tax Act, 1961 liberally, the Supreme Court has held that such a subsidy does not partake of the incidents which attract the conditions for its deductibility from `actual cost' and the amount of subsidy is not to be deducted from the `actual cost' under Section 43(1) for the purpose of calculation of depreciation, etc. We may state that while holding that the subsidy received by the assessee was not revenue revenue receipt in its hands, the Tribunal had relied upon the judgment rendered in Lucknow Producers' Co-Op. Milk Union Ltd. vs. CIT (1983) 143 ITR 60 (All.) and this judgment of the Allahabad High Court has been approved by the Supreme Court in Commissioner of Income-tax (Supra). In view of the specific finding recorded by the Tribunal to the effect that the State Government had granted subsidy to the assessee by way of impetus to establish an industry in the backward area without any further conditions or stipulations to invest a part of such subsidy in the purchase of capital assets, we are of the opinion that the Tribunal did not commit any error in holding that investment allowance and depreciation should be allowed without reducing the cost of capital asset by the amount of subsidy received. We accordingly answer the question in the affirmative i.e. against the revenue and in favour of the assessee.

The reference stands accordingly disposed of with no order as to costs.

(J.M. Panchal, J.)

(M.S. Shah, J.)

sundar/-